



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R03-RCRA-2012-0294; FRL- 9900-47-Region3]

Virginia: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Virginia has applied to EPA for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing Virginia's revisions through this immediate final action. EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize Virginia's revisions to its hazardous waste program will take effect. If we receive comments that oppose this action we will publish a document in the **Federal Register** withdrawing the relevant portions of this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize revisions to Virginia's program that were the subject of adverse comments.

DATES: This final authorization will become effective on *[insert date 60 days after the date of publication in the Federal Register]*, unless EPA receives adverse written comments by *[insert date 30 days after the date of publication in the Federal Register]*. If EPA receives any such

comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect as scheduled.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R03-RCRA-2012-0294**, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. E-mail: barbieri.andrea@epa.gov
3. Mail: Andrea Barbieri, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.
4. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

You may inspect and copy Virginia's application from 8:00 a.m. to 4:30 p.m., Monday through Friday at the following locations: Virginia Department of Environmental Quality, (VADEQ), Office of Regulatory Affairs, 629 East Main Street, Richmond, VA 23219 , Phone number: (804) 698-4426, and EPA Region III Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone number: (215) 814-5254.

Instructions: Direct your comments to Docket ID No. **EPA-R03-RCRA-2012-0294**.

EPA's policy is that all comments received will be included in the public file without change and may be made available on line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The Federal <http://www.regulations.gov> Web site is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Andrea Barbieri, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, Phone number: (215) 814-3374; e-mail address: barbieri.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with,

and no less stringent than the Federal program. As the Federal program is revised to become more stringent or broader in scope, States must revise their programs and apply to EPA to authorize the revisions. Authorization of revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other revisions occur. Most commonly, States must revise their programs because of revisions to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA concludes that Virginia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Virginia final authorization to operate its hazardous waste program with the revisions described in its application for program revisions, subject to the procedures described in section E, below. Virginia has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which Virginia has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What Is the Effect of This Authorization Decision?

This decision serves to authorize revisions to Virginia's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which Virginia is being authorized by this action are already effective and are not changed by this action. Virginia has enforcement responsibilities under its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Virginia has taken its own actions.

D. Why Wasn't There a Proposed Rule Before This Rule?

EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize Virginia's program revisions. If EPA receives comments that oppose this authorization, that document will serve as a proposal to authorize the revisions to Virginia's program that were the subject of adverse comment.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule would become effective. EPA

will base any further decision on the authorization of Virginia's program revisions on the proposal mentioned in the previous section. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose the authorization of a particular revision to Virginia's hazardous waste program, we will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Virginia Previously Been Authorized for?

Initially, Virginia received final authorization to implement its hazardous waste management program effective December 18, 1984 (49 FR 47391). EPA granted authorization for revisions to Virginia's regulatory program effective August 13, 1993 (58 FR 32855); September 29, 2000 (65 FR 46607); June 20, 2003 (68 FR 36925); July 10, 2006 (71 FR 27204); and July 30, 2008 (73 FR 44168).

G. What Revisions Are We Authorizing With This Action?

On December 18, 2012, Virginia submitted a final complete program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Virginia's revision application includes various regulations that are equivalent to, and no less stringent than, revisions to the Federal hazardous waste program, as published in the Code of Federal Regulations as of December 31, 2010.

We now make an immediate final decision subject to receipt of written comments that oppose this action that Virginia's hazardous waste program revisions satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Virginia's final authorization for the following program revisions:

1. Program Revision Changes for Federal Rules

Virginia seeks authority to administer the Federal requirements that are listed in Table 1. Virginia incorporates by reference these Federal provisions, in accordance with the dates specified in Title 9, Virginia Administrative Code (9VAC 20-60-18). This Table lists the Virginia analogs that are being recognized as no less stringent than the analogous Federal requirements. The Virginia Waste Management Act (VWMA), enacted by the 1986 session of Virginia's General Assembly and recodified in 1988 as Chapter 14, Title 10.1, Code of Virginia, forms the basis of the Virginia program. These regulatory references are to Title 9, Virginia Administrative Code (9 VAC) effective March 2, 2011.

Table 1. - Virginia's Analogs to the Federal Requirements

Description of Federal Requirement (Revision Checklists ¹)	Federal Register	Analogous Virginia Authority
RCRA Cluster XVII		
Hazardous Waste and Used Oil; Correction to the Errors in the Code of Federal Regulations, Revision Checklist 214	71 FR 40254, July 14, 2006	9 VAC §§ 20-60-18, 20-60-260 A, 20-60-261 A, 20-60-262 A, 20-60-264 A, 20-60-264 A, 20-60-265 A, 20-60-266 A, 20-60-268 A, 20-60-270 A, 20-60-273 A, 20-60-279 A

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Analogous Virginia Authority
Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes, Revision Checklist 215	71 FR 42928, July 28, 2006	9 VAC §§ 20-60-18, 20-60-260 A, 20-60-261 A
RCRA Cluster XVIII		
Regulation of Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System to Produce Synthetic Gas, Revision Checklist 216	73 FR 57, January 2, 2008	9 VAC §§ 20-60-18, 20-60-260 A, 20-60-261 A
National Emission Standards for Hazardous Waste Air Pollutants; Standards for Hazardous Waste Combustors; Amendments, Revision Checklist 217	73 FR 18970, April 8, 2008	9 VAC §§ 20-60-18, 20-60-264 A, 20-60-266 A
Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019, Revision Checklist 218	73 FR 31756, June 4, 2008	9 VAC §§ 20-60-18, 20-60-261 A
RCRA Cluster XIX		
Academic Laboratories Generator Standards, Revision Checklist 220	73 FR 72912 December 1, 2008	9 VAC §§ 20-60-18, 20-60-261 A, 20-60-262 A
Expansion of RCRA Comparable Fuel Exclusion, Revision Checklist 221 ²	73 FR 77954, December 19, 2008	9 VAC §§ 20-60-18, 20-60-261
RCRA Cluster XX		
OECD Requirements; Export Shipments of Spent Lead-Acid Batteries, Revision Checklist 222	75 FR 1236, January 8, 2010	9 VAC §§ 20-60-18, 20-60-262 A, 20-60-263 A, 20-60-264 A, 20-60-265 A, 20-60-266 A

Description of Federal Requirement (Revision Checklists¹)	Federal Register	Analogous Virginia Authority
Hazardous Waste Technical Corrections and Clarification, Revision Checklist 223	75 FR 12989, March 18, 2010; as amended 75 FR 31716, June 4, 2010	9 VAC §§ 20-60-260 A, 20-60-261 A, 20-60-262 A, 20-60-263 A, 20-60-264 A, 20-60-265 A, 20-60-266 A, 20-60-268 A, 20-60-270 A
RCRA Cluster XXI		
Removal of Saccharin and Its Salts from the List of Hazardous Constituents, Revision Checklist 225	75 FR 78918 December 17, 2010	9 VAC §§ 20-60-18, 20-60-261 A, 20-60-268 A
Academic Laboratories Generator Standards Technical Corrections, Revision Checklist 226	75 FR 79304, December 20, 2010	9 VAC §§ 20-60-18, 20-60-262 A
Other		
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule	71 FR 35395, June 20, 2006	9 VAC §§ 20-60-18, 20-60-261 A
Extension of Site-Specific Regulations for University Laboratories XL Projects	71 FR 35547, June 21, 2006	9 VAC §§ 20-60-18, 20-60-262 A
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion	71 FR 43067, July 31, 2006	9 VAC §§ 20-60-18, 20-60-261 A
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion	72 FR 43, January 3, 2007	9 VAC §§ 20-60-18, 20-60-261 A

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion	72 FR 4645, February 1, 2007	9 VAC §§ 20-60-18, 20-60-261 A
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion	72 FR 31185 June 6, 2007	9 VAC §§ 20-60-18, 20-60-261 A
Standards for Universal Waste Management; CFR Correction	72 FR 35666, June 29, 2007	9 VAC §§ 20-60-18, 20-60-273 A

¹ A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the Federal Register. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal Regulations. For more information see EPA's RCRA State Authorization web page at <http://www.epa.gov/osw/laws-regs/state/index.htm>.

² Adopted changes to comparable fuel provisions amended on this date, not the emissions comparable fuel provisions that were subsequently withdrawn.

H. Where Are the Revised Virginia Rules Different From the Federal Rules?

1. Virginia's Adoption of EPA's Site-Specific Delisting and Variance Decisions

In its regulations, Virginia has adopted EPA's decisions relative to the site-specific delistings published between June 20, 2006 and June 6, 2007 (71 FR 35395, 71 FR 35547, 71 FR 43067, 72 FR 43, 72 FR 4645, 72 FR 31185). EPA today is not authorizing Virginia to delist wastes. With regard to waste delisted as a hazardous waste by EPA, the authority of the Department of Environmental Quality is limited to recognition of the waste as a delisted waste in Virginia, and the supervision of waste management activities for the delisted waste when the activities occur within the Commonwealth of Virginia. Virginia is not authorized to delist wastes on behalf of the EPA, or to otherwise administer any case decision to issue, revoke, or continue a delisting of a waste by EPA.

2. Rules for Which Virginia is Not Seeking Authorization

Virginia is not seeking authorization for the following RCRA revisions that are found in 40 CFR as of December 31, 2010:

- a) Virginia is not seeking authorization for the Revision to the Definition of Solid Waste rule (October 30, 2008, 73 FR 64668)
- b) Virginia is not seeking authorization for the Withdrawal of the Emission Comparable Fuel Exclusion (June 15, 2010, 75 FR 33712) because Virginia adopted the Expansion of the RCRA Comparable Fuel Exclusion (December 19, 2008, 73 FR 77954) without the emission comparable fuel exclusion provisions that were subsequently withdrawn in this rule.

I. Who Handles Permits After This Authorization Takes Effect?

After this authorization, Virginia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization. Until such time as formal transfer of EPA permit responsibility to Virginia occurs and EPA terminates its permit, EPA and Virginia agree to coordinate the administration of permits in order to maintain consistency. We will not issue any more new permits or new portions of permits for the provisions listed in Section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Virginia is not yet authorized.

J. How Does This Action Affect Indian Country (18 U.S.C. 115) in Virginia?

Virginia is not seeking authorization to operate the program on Indian lands, since there are

no Federally-recognized Indian lands in Virginia.

K. What Is Codification and Is EPA Codifying Virginia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart VV, for this authorization of Virginia's program revisions until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action would not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). In any case, Executive Order 13175 does not apply to this

rule since there are no Federally recognized tribes in the State of Virginia.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks that may disproportionately affect children. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701, et seq.) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of

the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2); this action will be effective **[insert date 60 days after publication in the Federal Register]**.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 12, 2013.

Shawn M. Garvin ,

Regional Administrator, EPA Region III.

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